

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
Tom E. Wheeler (SBN 308789)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@ toddflaw.com
abacon@ toddflaw.com
mgeorge@toddfllaw.com
twheeler@toddfllaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEVE GALLION, individually and on) Case No.
behalf of all others similarly situated,)

Plaintiff,)

vs.)

AMERICA'S HEALTH OPTIONS,)
LLC, and DOES 1 through 10,)
inclusive, and each of them,)

Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiff STEVE GALLION ("Plaintiff"), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based
upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable
 2 remedies resulting from the illegal actions of AMERICA'S HEALTH OPTIONS,
 3 LLC ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff
 4 on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection
 5 Act, 47 U.S.C. § 227 *et seq.* ("TCPA") and related regulations, thereby invading
 6 Plaintiff's privacy and causing her to incur unnecessary and unwanted expenses.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
 9 a resident of California, seeks relief on behalf of a Class, which will result in at
 10 least one class member belonging to a different state than that of Defendant, a
 11 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
 12 in violation of the TCPA, which, when aggregated among a proposed class in the
 13 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 14 Therefore, both diversity jurisdiction and the damages threshold under the Class
 15 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

16 3. Venue is proper in the United States District Court for the Central
 17 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
 18 business within the State of California and Plaintiff resides within the County of
 19 San Bernadino.

20 **PARTIES**

21 4. Plaintiff, STEVE GALLION ("Plaintiff"), is a natural person residing
 22 in San Bernando, California and is a "person" as defined by 47 U.S.C. § 153 (39).

23 5. Defendant, AMERICA'S HEALTH OPTIONS, LLC ("Defendant"),
 24 is an insurance agency, and is a "person" as defined by 47 U.S.C. § 153 (39).

25 6. The above named Defendant, and its subsidiaries and agents, are
 26 collectively referred to as "Defendants." The true names and capacities of the
 27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
 28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
3 Complaint to reflect the true names and capacities of the DOE Defendants when
4 such identities become known.

5 7. Plaintiff is informed and believes that at all relevant times, each and
6 every Defendant was acting as an agent and/or employee of each of the other
7 Defendants and was acting within the course and scope of said agency and/or
8 employment with the full knowledge and consent of each of the other Defendants.
9 Plaintiff is informed and believes that each of the acts and/or omissions complained
10 of herein was made known to, and ratified by, each of the other Defendants.

11 **FACTUAL ALLEGATIONS**

12 8. Beginning in or around April of 2018, Defendant contacted Plaintiff
13 on Plaintiff's cellular telephone number ending in -6963, in an attempt to solicit
14 Plaintiff to purchase Defendant's services.

15 9. Defendant contacted or attempted to contact Plaintiff from telephone
16 number (910) 830-0147 confirmed to belong to Defendant.

17 10. When Plaintiff would answer Defendant's call, Plaintiff would hear
18 an automated recorded message followed by a prompt to press "1" in order to be
19 connected to a live employee for more information.

20 11. Defendant used an "automatic telephone dialing system" as defined
21 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

22 12. Defendant's calls constituted calls that were not for emergency
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 13. Defendant's calls were placed to telephone number assigned to a
25 cellular telephone service for which Plaintiff incurs a charge for incoming calls
26 pursuant to 47 U.S.C. § 227(b)(1).

27 14. During all relevant times, Defendant did not possess Plaintiff's "prior
28 express consent" to receive calls using an automatic telephone dialing system or an

1 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
2 227(b)(1)(A).

3 15. Defendant placed multiple calls soliciting its business to Plaintiff on
4 his cellular telephone ending in -6963 beginning in or around April of 2018 and
5 continuing for several months.

6 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
7 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

8 17. Plaintiff received numerous solicitation calls from Defendant within a
9 12-month period.

10 18. Upon information and belief, and based on Plaintiff's experiences of
11 being called by Defendant despite having no prior relation to Plaintiff whatsoever,
12 and at all relevant times, Defendant failed to establish and implement reasonable
13 practices and procedures to effectively prevent telephone solicitations in violation
14 of the regulations prescribed under 47 U.S.C. § 227(c)(5).

15 **CLASS ALLEGATIONS**

16 19. Plaintiff brings this action individually and on behalf of all others
17 similarly situated, as a member of the proposed class (hereinafter, "The Class"),
18 defined as follows:

19
20 All persons within the United States who received any
21 solicitation/telemarketing telephone calls from
22 Defendant to said person's cellular telephone made
23 through the use of any automatic telephone dialing
24 system or an artificial or prerecorded voice and such
25 person had not previously consented to receiving such
26 calls within the four years prior to the filing of this
27 Complaint

26 20. Plaintiff represents, and is a member of, The Class, consisting of all
27 persons within the United States who received any solicitation/telemarketing
28 telephone calls from Defendant to said person's cellular telephone made through

1 the use of any automatic telephone dialing system or an artificial or prerecorded
2 voice and such person had not previously not provided their cellular telephone
3 number to Defendant within the four years prior to the filing of this Complaint.

4 21. Defendant, its employees and agents are excluded from The Class.
5 Plaintiff does not know the number of members in The Class, but believes the
6 Class's members number in the thousands, if not more. Thus, this matter should
7 be certified as a Class Action to assist in the expeditious litigation of the matter.

8 22. The Class is so numerous that the individual joinder of all of its
9 members is impractical. While the exact number and identities of The Class
10 members are unknown to Plaintiff at this time and can only be ascertained through
11 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
12 The Class includes thousands of members. Plaintiff alleges that The Class
13 members may be ascertained by the records maintained by Defendant.

14 23. Plaintiff and members of The Class were harmed by the acts of
15 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
16 and The Class members via their cellular telephones thereby causing Plaintiff and
17 The Class members to incur certain charges or reduced telephone time for which
18 Plaintiff and The Class members had previously paid by having to retrieve or
19 administer messages left by Defendant during those illegal calls, and invading the
20 privacy of said Plaintiff and The Class members.

21 24. Common questions of fact and law exist as to all members of The
22 Class which predominate over any questions affecting only individual members of
23 The Class. These common legal and factual questions, which do not vary between
24 Class members, and which may be determined without reference to the individual
25 circumstances of any Class members, include, but are not limited to, the following:

- 26 a. Whether, within the four years prior to the filing of this
27 Complaint, Defendant made any telemarketing/solicitation call
28 (other than a call made for emergency purposes or made with

1 the prior express consent of the called party) to a Class member
2 using any automatic telephone dialing system or any artificial
3 or prerecorded voice to any telephone number assigned to a
4 cellular telephone service;

5 b. Whether Plaintiff and The Class members were damaged
6 thereby, and the extent of damages for such violation; and

7 c. Whether Defendant should be enjoined from engaging in such
8 conduct in the future.

9 25. As a person that received numerous telemarketing/solicitation calls
10 from Defendant using an automatic telephone dialing system or an artificial or
11 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
12 claims that are typical of The Class.

13 26. Plaintiff will fairly and adequately protect the interests of the members
14 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
15 class actions.

16 27. A class action is superior to other available methods of fair and
17 efficient adjudication of this controversy, since individual litigation of the claims
18 of all Class members is impracticable. Even if every Class's member could afford
19 individual litigation, the court system could not. It would be unduly burdensome
20 to the courts in which individual litigation of numerous issues would proceed.
21 Individualized litigation would also present the potential for varying, inconsistent,
22 or contradictory judgments and would magnify the delay and expense to all parties
23 and to the court system resulting from multiple trials of the same complex factual
24 issues. By contrast, the conduct of this action as a class action presents fewer
25 management difficulties, conserves the resources of the parties and of the court
26 system, and protects the rights of each Class member.

27 28. The prosecution of separate actions by individual Class members
28 would create a risk of adjudications with respect to them that would, as a practical

1 matter, be dispositive of the interests of the other Class members not parties to such
2 adjudications or that would substantially impair or impede the ability of such non-
3 party Class members to protect their interests.

4 29. Defendant has acted or refused to act in respects generally applicable
5 to The Class, thereby making appropriate final and injunctive relief with regard to
6 the members of the Classes as a whole.

7 **FIRST CAUSE OF ACTION**

8 **Negligent Violations of the Telephone Consumer Protection Act**

9 **47 U.S.C. §227(b).**

10 **On Behalf of The Class**

11 30. Plaintiff repeats and incorporates by reference into this cause of action
12 the allegations set forth above at Paragraphs 1-29.

13 31. The foregoing acts and omissions of Defendant constitute numerous
14 and multiple negligent violations of the TCPA, including but not limited to each
15 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular
16 47 U.S.C. § 227 (b)(1)(A).

17 32. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
18 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 33. Plaintiff and The Class members are also entitled to and seek
21 injunctive relief prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**

23 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
24 **Act**

25 **47 U.S.C. §227(b)**

26 **On Behalf of The Class**

27 34. Plaintiff repeats and incorporates by reference into this cause of action
28 the allegations set forth above at Paragraphs 1-29.

35. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

36. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

37. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47*

